

WINGFIELD & HUNDLEY ELEVATOR
CO., INC.

SOLICITATION NO. IFB 652-132-16

VABCA-5101

VA MEDICAL CENTER
RICHMOND, VIRGINIA

Eric L. Boyer, Vice President, Wingfield & Hundley Elevator Co., Inc., Richmond, Virginia, for the Appellant.

Stacey North Willis, Esq., Trial Attorney; **Charlma Jones, Esq.**, Deputy Assistant General Counsel; and **Phillipa L. Anderson, Esq.**, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

ORDER DISMISSING APPEAL

1. The Board, in its August 12, 1996 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that the basis of this appeal was the Contracting Officer's "final decision", dated May 16, 1996. The Board went on to note that the Contracting Officer may have improperly issued what she has characterized as a "final decision" on a pre-award issue. In its Notice of Appeal, the Contractor stated "we understand this procedure to appeal may be inappropriate, however we are following the guidelines in the response letter from the local contracting officer."
2. In its ORDER TO SHOW CAUSE, the Board noted that it appeared from the documents before it that the "dispute" did not appear to arise under, or relate to, a *contract* between the Contractor and the Government. We further noted that the *Contract Disputes Act* (CDA), 41 U.S.C. §§ 601-613 vests jurisdiction in the boards of contract appeals to deal "with contractors, not with disappointed bidders." *United States v. John C. Grimberg, Inc.*, 702 F. 2d 1362, 1368 (Fed. Cir. 1983). The CDA does not empower this Board to adjudicate what appears to be a bid protest action. *Coastal Corp. v. United States*, 713 F. 2d 728 (Fed. Cir. 1983); *Commercial Sound & Safety, Inc.*, VABCA No. 3750, 93-1 BCA ¶ 25,498.
3. We granted the parties until August 26, 1996, to Show Cause why this appeal should not be dismissed for lack of jurisdiction, pursuant to Board Rule 5. The Government responded that dismissal "for lack of jurisdiction is appropriate" as "the Contracting Officer incorrectly used final decision language in a pre-award matter." On August 16, 1996, the Board received a copy of the Contractor's Notice of Appeal to the General Accounting Office, where the Contractor states, "we understand we are to make an appeal of the Contracting officer's decision to the General Accounting Office instead of the Board of Contract Appeals."
4. Given the facts before the Board, we conclude that we are without jurisdiction to consider the matter. Accordingly, the appeal of Wingfield & Hundley Elevator Co., Inc., VABCA-5101, is hereby dismissed pursuant to Board Rule 5.

IT IS SO ORDERED

DATE: August 23, 1996

GUY H. MCMICHAEL III
Chief Administrative Judge
Panel Chairman

We concur:

MORRIS PULLARA, JR.
Administrative Judge

JAMES K. ROBINSON
Administrative Judge